

ORIGINAL

Decision No. 93027 MAY 5 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations.)
rates, and practices of ALDO J.)
LAZZARINI, dba American Van Lines,)
a sole proprietorship.)

OII No. 27
(Reopened October 8, 1980)

Robert A. Lazzarini, for Aldo J. Lazzarini,
respondent.
Robert Cagen, Attorney at Law, and
Ed Hjelt, for the Commission staff.

OPINION ON REOPENING FOR FURTHER HEARING

By Decision No. 90846, dated September 25, 1979, respondent Aldo J. Lazzarini, dba American Van Lines (Lazzarini), was directed to: (1) pay refunds to household goods shippers in the amount of \$1,641.42, (2) pay penalties to the Commission in the total amount of \$749.25, and (3) pay a punitive fine in the amount of \$250. The decision ordered that all payments should be made by November 26, 1979. The punitive fine was paid on November 19, 1979.

By a letter dated November 19, 1979, Lazzarini requested an extension of time to pay the refunds and penalties. Specifically, he requested authority to pay one-half of the refunds by March 15, 1980, the remaining one-half by June 15, 1980, and the penalties by September 17, 1980. Lazzarini's stated basis for the requested extension was a cash-flow problem. The Commission staff reviewed the request and had no objection to it. By Decision No. 91449 dated March 18, 1980, the requested extension of time to make the refunds and pay the penalties was granted.

Lazzarini did not make the required refund and penalty payments within the extended time. Because they continued to remain unpaid, the proceeding was reopened by Decision No. 92316 dated October 8, 1980 to formally inquire into the reasons why Lazzarini has failed to comply with the directives in issue and to determine if any additional sanctions should be imposed on him.

Public hearing in the reopened proceeding was held before Administrative Law Judge Arthur M. Mooney in San Francisco on January 9, 1981. The matter was submitted upon the receipt of a written stipulation by the respondent carrier and the staff on January 21, 1981.

No evidence was taken at the hearing. Staff counsel stated that:

1. All of the refund and penalty payments Lazzarini has been directed to make continue to remain unpaid.
2. The staff has recently reviewed Lazzarini's financial position. This review disclosed that he has an acute cash-flow shortage, and because of this Lazzarini has been unable to make the payments in full.
3. An installment basis for making the payments is being worked out by the staff and Lazzarini and will be filed within 10 days. Generally, it will provide that Lazzarini shall pay \$100 per month into a special account and each six months will make disbursements from this account to the shippers to whom refunds are payable until all refund payments have been made. Following this, he will continue to deposit the \$100 per month in the special fund and will pay the penalties to the Commission when there is a sufficient amount in the account to do so.
4. The reason the stipulation will provide for disbursements to shippers after \$600

has been accumulated at the end of a six-month period is to have an orderly procedure for the payment of the refund due each shipper and to avoid numerous partial refunds.

Staff counsel recommended that the payment schedule to be set out in detail in stipulation be adopted by the Commission. He stated that because of Lazzarini's cash-flow problem, an additional monetary punitive fine would not be appropriate. He did recommend, however, that should Lazzarini not timely perform any of the duties set forth in the stipulation, his operating authority be suspended forthwith until he has paid all refunds and penalties ordered by Decision No. 90846.

The representative for Lazzarini took no exceptions to the statements and recommendations by staff counsel.

The stipulation setting forth the installment basis for payment was filed, as stated above, on January 21, 1981. The staff recommendation will be adopted. Since Lazzarini has stipulated to the installment payment schedule adopted herein, this decision will be made effective on the date it is issued.

Findings of Fact

1. Lazzarini has not made any of the refund payments to shippers totaling \$1,641.42 or penalty payments totaling \$749.25 within the time period specified in Decision No. 90846 as modified by Decision No. 91449. -
2. The refunds and penalties continue to remain unpaid.
3. Because of an acute cash-flow shortage, Lazzarini has not had the funds available to pay the refunds and penalties in full.
4. By a written stipulation between Lazzarini and the staff filed January 21, 1981, Lazzarini has agreed to pay the refunds and penalties in accordance with the installment basis and schedule set forth therein.

5. The installment basis and schedule for payment of the refunds and penalties by Lazzarini set forth in the stipulation referred to in Finding 4 are reasonable and should be adopted.

Conclusions of Law

1. Lazzarini should be directed to pay the refunds and penalties in issue in accordance with the installment schedule set forth in the order which follows.

2. In the event Lazzarini does not comply with the directive referred to in Conclusion 1, all operating authority held by him should be suspended forthwith until such time that he has paid in full all of the refunds and penalties in issue.

O R D E R

IT IS ORDERED that:

1. Commencing no later than twenty days after the effective date of this order, Aldo J. Lazzarini (Lazzarini), doing business as American Van Lines, shall deposit a minimum of \$100 each month in a special bank account. The account shall contain no other money except that deposited for payments of penalties and refunds ordered in Decision No. 90846. Lazzarini shall not withdraw any money from the account except to pay refunds and penalties. After the first deposit, each succeeding monthly deposit shall be made no later than the 15th day of each consecutive month.

2. Lazzarini shall deposit to the account a total of \$2,390.67, representing \$1,641.42 in refunds and \$749.25 in penalties.

3. No later than the 25th day of each month, Lazzarini shall furnish the Commission with written proof of each deposit required by Ordering Paragraph 1.

4. Immediately after each period of six consecutive deposits, Lazzarini shall make all reasonable efforts to refund to shippers as much of the money as is in the account and is possible to refund.

5. No later than 60 days after the last deposit in each period of six consecutive deposits, Lazzarini shall submit to the Commission a written report which shall set forth (1) all payments to named shippers, and (2) the reasonable efforts he has taken to locate and refund money to those shippers to whom refunds have not yet been made.

6. A total of \$1,641.42 of the deposits shall be allotted to refund payments, or to such other disposition as the Commission may order for that portion of the \$1,641.42 which remains unrefunded after reasonable efforts to locate shippers to refund the money.

7. After a sufficient amount to pay the refunds has been deposited to the account, Lazzarini shall continue depositing a minimum of \$100 a month until \$749.25, the amount of the penalties ordered in Decision No. 90846, has been accumulated. Within 20 days after the \$749.25 in penalties has accumulated in the account, Lazzarini shall pay the entire amount to the Commission as payment for penalties ordered by Decision No. 90846. Any remaining amount in the account shall be the property of Lazzarini.

8. If Lazzarini does not timely perform each and all acts set forth in Ordering Paragraphs 1 through 7, the Commission shall suspend all operating authority of Lazzarini without hearing or further notice. Such suspension shall remain in effect until Lazzarini has paid all refunds and penalties ordered in Decision No. 90846.

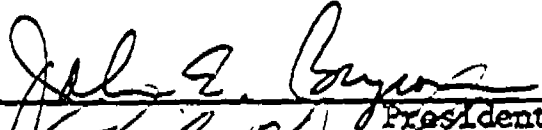
9. In all other respects, Decision No. 90846, as modified by Decision No. 91449, shall remain in full force and effect.

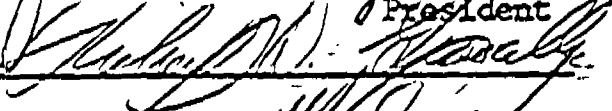
10. The Executive Director of the Commission shall cause personal service of this order to be made upon respondent.

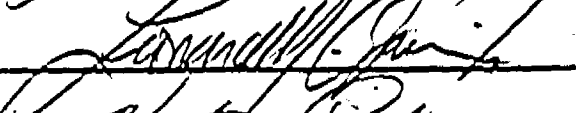
Aldo J. Lazzarini.

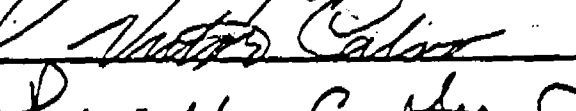
The effective date of this order is the date hereof.


Dated MAY 5 1981, at San Francisco, California.



President







Commissioners